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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

PAYAM GHADERI,

H026459

Plaintiff and Appellant,

(Santa Clara County  
Superior Court

v.

Nos. CV801594 & CV791584

CITY OF SAN JOSE,

Defendant and Respondent.

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By an amended complaint, appellant Payam Ghaderi (Ghaderi) sued respondent City of San Jose (the City) for “abuse, injury, death, and cruelty” to his cats as the result of a San Jose police officer having towed Ghaderi’s motor home on July 21, 2000.<sup>1</sup> On May 30, 2003, the trial court sustained the City’s demurrer to the amended complaint, without leave to amend, on the grounds that Ghaderi had failed to establish that he timely presented a claim to the City or that he was

<sup>1</sup> We liberally construe Ghaderi’s notice of appeal filed September 5, 2003, to include Santa Clara County case number CV791584 as well as case number CV801594 in light of his statement that he appeals from both the order on the demurrer (CV801594) and the order regarding the petition for relief from government entity claim filing requirements (CV791584). We note that the City of San Jose has responded to Ghaderi’s opening brief assuming Ghaderi has appealed from both orders.

excused from the requirement that he present his claim within the statutory time limits. On July 11, 2003, the trial court denied Ghaderi's "Petition for Relief from Government Entity Claim Filing Requirements" on the ground that the "application is untimely." Ghaderi appeals from the order sustaining the demurrer and from the order denying him permission to file a late government tort claim.

## **I. Discussion**

### **A. Demurrer to Amended Complaint**

Ghaderi contends the trial court improperly sustained the City's demurrer to his amended complaint without leave to amend on the ground that, "[b]ecause of incarceration the plaintiff had no way of filing a claim against the City of San Jose, had no way of obtaining forms and information, and had no way of hiring a legal counsel."

The intent of the Torts Claims Act (Gov. Code, §§ 810-996.6) is to "confine potential governmental liability to rigidly delineated circumstances. [Citation.]" (*Munoz v. State of California* (1995) 33 Cal.App.4th 1767, 1776.) Government Code section 911.2 requires, in pertinent part, that "a claim relating to a cause of action for death or for injury to person or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action."

Where, as here, a claim is brought against a government entity for injury to personal property, "a *prerequisite* to a valid cause of action is the filing of a claim with the county within [six months] after the alleged cause of action arises. [Citations.]" (*Taylor v. Mitzel* (1978) 82 Cal.App.3d 665, 672, italics in original.) Ghaderi acknowledges that his "cause of action against [the City] occurred [*sic*] on or about July 22, 2000." Ghaderi's claim, which was first received by the city of

San Jose on July 30, 2001, was too late to meet the mandatory statutory time limit set forth in Government Code section 911.2.

The City correctly notes that Ghaderi is not excused from meeting the statutory time limits in his case simply because he was representing himself throughout this action. In representing himself, Ghaderi “subjected [himself] to the same restrictive rules of procedure as does any trial lawyer.” (*Monastero v. Los Angeles Transit Co.* (1955) 131 Cal.App.2d 156, 160.)

Ghaderi’s failure to timely file a claim within the mandatory statutory six-month time limit similarly is not excused because Ghaderi was incarcerated or because he “had no way of obtaining forms and information, and had no way of hiring a legal counsel.” The statutory time limits for Ghaderi to file his claim were not tolled during his period of incarceration since section 352.1 of the Code of Civil Procedure, which tolls “certain disabilities,” “does not apply to the filing of a claim against a public entity. [Citation.]” (*Moyer v. Hook* (1970) 10 Cal.App.3d 491, 493.)

Furthermore, as the trial court correctly noted, “[t]he Department of Corrections’ failure to respond to [Ghaderi’s] request for assistance does not excuse [him] from the requirement of presenting the claim to the appropriate public entity.” For example, in *Munoz v. State of California*, *supra*, 33 Cal.App.4th 1767, the court held that a claimant could not justify her delay in presenting a late-claim application on the ground that the letters sent to various government agencies requesting the medical records of the claimant’s decedent were not received because the attorney involved was “lulled into a somewhat false sense of complacency in reliance on the notion that a letter sent to a governmental agency by an attorney would receive some type of response.” (*Id.* at pp. 1782.) The court reasoned that the claimant did not establish that her counsel exercised due diligence, and it also rejected plaintiff’s claim that her counsel “needed her

deceased father's medical records before counsel could file a claim in good faith" since Government Code section 910 governs the content of a claim under Government Code section 911.2 and the former section does not require "specificity" or "perfect precision." (*Id.* at pp. 1784-1785.)

Neither Ghaderi's alleged failure to receive a response to his letter to the Department of Corrections nor his claimed inability to get legal help or proper forms justifies his failure to file the claim within the statutory six-month minimum. A claim under Government section 911.2 "need only show (a) the name and post office address of the claimant; (b) the post office address to which the person presenting the claim desires notices to be sent; (c) the date, place, and other circumstances of the occurrence or transaction which gave rise to the claim asserted; (d) a general description of the indebtedness, obligation, injury, damage or loss incurred *so far as it may be known at the time of presentation of the claim*; (e) the name or names of the public employee or employees causing the injury, damage, or loss, *if known*; and (f) an indication whether jurisdiction over the claim rests in municipal or superior court if the amount claimed exceeds \$10,000." (*Id.* at p. 1784.)

No particular form nor the assistance of counsel is required to make a section 911.2 claim. The trial court therefore properly sustained the City's demurrer to Ghaderi's amended complaint without leave to amend.

#### **B. Relief from Government Entity Claim Filing Requirements**

Ghaderi acknowledges that his cause of action accrued on or about July 22, 2000; he also acknowledged that he did not submit a claim in this action until July 20, 2001.

"Under Government Code section 945.4, presentation of a timely claim is a condition precedent to the commencement of suit against the public entity. However, if the injured party fails to file a timely claim, a written application may

be made to the public entity for leave to present such claim. (Gov. Code, § 911.4, subd. (a).) If the public entity denies the application, Government Code section 946.6 authorizes the injured party to petition the court for relief from the claim requirements.” (*Munoz v. State of California, supra*, 33 Cal.App.4th at p. 1777.)

However, an individual who failed to present his claim to the public entity must file a late-claim application for relief from the government entity filing requirements “within a reasonable time not to exceed one year after the accrual of the cause of action” (Gov. Code, § 911.4, subd. (b)), and “[f]iling a late-claim application within one year after the accrual of a cause of action is a jurisdictional prerequisite to a claim-relief petition. [Citation.] When the underlying application to file a late claim is filed more than one year after the accrual of the cause of action, the court is without jurisdiction to grant relief under Government Code section 946.6. [Citation.]” (*Munoz v. State of California, supra*, 33 Cal.App.4th at p. 1779.)

In this case, the trial court denied Ghaderi’s petition for relief from the filing requirements on the ground that it was “untimely.” “A judgment or order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support [the trial court ruling] on matters as to which the record is silent, and error must be affirmatively shown.” (*Denham v. Superior Court (Marsh and Kidder)* (1970) 2 Cal.3d 557, 564.) Nothing in the record before us rebuts the presumption that the trial court correctly determined that Ghaderi’s late-claim application was submitted more than one year after the accrual of the cause of action in this case. Here, where “the record is inadequate for meaningful review, the appellant defaults, and the decision of the trial court should be affirmed.” (*Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1051, fn. 9; see also *Gee v. American Realty and Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416 [same]; *Maria P. v. Riles* (1987) 43 Cal.3d

1281, 1295 [burden of party challenging the decision “to provide an adequate record to assess error”].)

Accordingly, we shall affirm the trial court’s order denying Ghaderi relief from the government entity claim filing requirements.

## **II. Disposition**

The orders appealed from are affirmed.

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Mihara, J.

We concur:

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Rushing, P.J.

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Elia, J.